IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4170 OF 2004

Jayprakash Hawaldar Chaube
and others ... Applicants

versus

State of Maharashtra ... Respondent

...

Mr. Subhash Jha i/by Law Global, for the Applicants.

Mr. V.B. Konde Deshmukh, A.P.P., for the State.

Mr. J.G. Bhanushali, for the Complainant.

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CORAM : A.M.KHANWILKAR,J.

7th October 2004

P.C.:

. Heard Counsel for the parties. Perused the record produced by the learned A.P.P. The case of the Applicants is that the F.I.R. as has been registered has been registered with purpose only to falsely implicate all the Applicants before this Court. The same is filed in a cavaliar manner. On the other hand, the deceased

and the Applicant No. 1 were married in the year 1992 and lived happily. The three children were born out of the said wedlock, the last amongst them in the year 1999. Indeed, it is accepted that the deceased shifted to native place and was staying along with the parents of the Applicants in the year 2003, but she once again returned to Mumbai and started living along with the Applicants. The case of the prosecution, on the other hand, is that the deceased was being harassed and demand for dowry was made right after the marriage till recently. The first information report as well as the statements of witnesses recorded during the investigation conducted sofar would reveal this position. It is not the case of no evidence at all. Counsel for the Applicants, however, relying on the decisions reported in (2004) 4 S.C.C. 470 - State of A.P. v. Raj Gopal Asawa and another; 2003 ALL MR (Cri) 1259 - State of Maharashtra v. Ibrahim Kalubhai Kazi; and 2004 ALL MR (Cri) 1787 - Shamrao Dadarao Jadhav v. State of Maharashtra, contends that taking the F.I.R. as it is, even then no case has been made out against the Applicants, much less Applicants Nos. 2 and 3 herein. This submission clearly

overlooks that the investigation is at a nascent stage and this Court is called upon to consider the application for anticipatory bail. Suffice it to note at this stage that the F.I.R. as well as the material collected by the investigating agency so far does involve the Applicants. Role of each of the Applicants has been ascribed in the said materials. If it is so, for considering the prayer for grant of anticipatory bail, it will be sufficient to reckon that material. It is not possible to analyse the material already collected by the investigating agency to find out as if a case has been made out or not. Mr. Jha for the Applicants contends that the F.I.R. has been lodged after delay of more than 2 and half months and the F.I.R. as has been registered is a calculated document as material facts stated in the F.I.R. about the date of marriage are misleading only to press into service the statutory presumption. Reliance is placed on the decision of the Apex Court in (1972) 3 S.C.C. 393 in the case of Thulia Kali v. The State of Tamil Nadu, in particular, para 12 thereof, to contend that the delay in lodging the F.I.R., if is unexplained, that is fatal. Once again, I may observe that the investigation is at nascent

stage. The question whether delay in lodging F.I.R. has been satisfactorily explained or not is a matter for trial. That cannot be the basis for granting anticipatory bail to the Applicants. Having regard to the materials already collected by the investigating agency, it is not possible to take the view that there is no material before this Court regarding involvement of the Applicants at all. This reason by itself is sufficient for dismissing the prayer for anticipatory bail. Besides, it is seen from the record that the Applicants were absconding and this fact has been noted by the Court below in its order dated 21st September 2004. The Court below has also taken into account the relevant fact that initially the complainant, who is staying at his native place in Uttar Pradesh, was informed by the Applicants that the deceased died due to accident by BEST bus; whereas she had succumbed to burn injuries. The inquest panchnama does give a graphic description of the state of affairs when the alleged incident took place. Taking overall view of the matter, I am not inclined to consider the prayer for releasing the Applicants on anticipatory bail, because there is sufficient material against each of the

Applicants. Having regard to the nature of allegations, the custody of the Applicants would be necessary for further investigation. Hence, this application is dismissed.

. At this stage, Mr. Jha prays that the Applicants be given time to surrender. I see no reason to accede to this request, having regard to the facts and circumstances of this case. That request is rejected.

(A.M.KHANWILKAR,J.)